

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GARY A. WRIGHT and CYNTHIA M
WRIGHT,

Plaintiffs,

v.

ACCREDITED HOME LENDERS,
QUALITY LOAN SERVICE,
MORTGAGE ELECTRONIC
REGISTRATIONS, INC.,
JPMCSPECIALTY MORTGAGE LLC,

Defendants.

CASE NO. C11-5000BHS

ORDER DENYING MOTION
FOR TEMPORARY
RESTRAINING ORDER
AND/OR PRELIMINARY
INJUNCTION HEARING

This matter comes before the Court on Plaintiffs' (the "Wrights") *ex parte* application for temporary restraining order ("TRO"). Dkt. 2. The Court has considered the pleadings filed in support of the motion and the remainder of the file and hereby denies the motion for TRO and/or preliminary injunction for the reasons stated herein.

I. PROCEDURAL AND FACTUAL BACKGROUND

This matter arises out of a pending foreclosure action involving the Wrights' property. On January 3, 2011, the Wrights filed an *ex parte* motion for temporary restraining order ("TRO"). Dkt. 2.

The Wrights' complaint contains only one cause of action: breach of contract. Dkt. 1, Complaint ¶ 2. The Wrights seek a temporary restraining order and request discovery to occur in this matter. *Id.* at 4-5.

1 The Wrights have filed documents that appear to show that they have attempted to
2 notify Defendants of their intent to file the instant motion for TRO. The foreclosure sale
3 of their home is set for January 14, 2011. *See* Complaint at 14 (Notice of Trustee Sale).
4 The Wrights have known about the impending foreclosure since as early as August 9,
5 2010. *See id.* The trustee's sale is set for January 14, 2010. *Id.*

6 II. DISCUSSION

7 The purpose of a TRO is "preserving the status quo and preventing irreparable
8 harm just so long as is necessary to hold a hearing [on the preliminary injunction
9 application], and no longer." *Granny Goose Foods, Inc. v. Brotherhood of Teamsters &*
10 *Auto Truck Drivers*, 415 U.S. 423 (1974); *see also Reno Air Racing Ass'n v. McCord*, 452
11 F.3d 1126, 1130-31 (9th Cir. 2006). To obtain a TRO or a preliminary injunction, the
12 moving party must show: (1) a likelihood of success on the merits; (2) a likelihood of
13 irreparable harm to the moving party in the absence of preliminary relief; (3) that a
14 balance of equities tips in the favor of the moving party; and (4) that an injunction is in
15 the public interest. *Winter v. Natural Res. Def. Council, Inc.*, ___ U.S. ___, 129 S. Ct.
16 365, 376 (2008). Traditionally, injunctive relief was also appropriate under an alternative
17 "sliding scale" test. *The Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008).
18 However, the Ninth Circuit overruled this standard in keeping with the Supreme Court's
19 decision in *Winter*. *American Trucking Ass'ns Inc. v. City of Los Angeles*, 559 F.3d 1046,
20 1052 (9th Cir. 2009) (holding that "[t]o the extent that our cases have suggested a lesser
21 standard, they are no longer controlling, or even viable").

22 Even if the Court assumes, without deciding, that the Wrights can establish the
23 elements of irreparable harm and public interest to issue the TRO or preliminary
24 injunction, the Court must still be satisfied that the Wrights have also established that the
25 balance of equities tips in their favor and that they are likely to succeed on the merits.

26 With respect to the balance of equities, it is troubling to the Court in considering
27 whether this situation is deserving of a TRO, emergency and rare relief, that the Wrights
28

1 have known about the potential foreclosure of their home for approximately five months
2 prior to filing the instant motion. *See* Dkt. 1 at 14 (notice of sale transmitted to the
3 Wrights on August 9, 2010, Wrights filed instant motion on January 3, 2011). The
4 Wrights could have filed a motion for a preliminary injunction after receiving the notice
5 of foreclosure, which would have permitted a proper briefing schedule on which all
6 parties could have participated. Instead, the Wrights have delayed in bringing this action
7 until just days before the sale is scheduled. Put otherwise, this “emergency” has been
8 precipitated, at least in part, by the Wrights. Thus, the balance of equities weighs heavily
9 in favor of Defendants.

10 Turning to the likelihood of success on the merits of the Wrights’ claims, the
11 Wrights have not made an adequate showing on the merits of their claims. Indeed it is
12 unclear from their complaint and their motion exactly what claims they are trying to
13 assert under their general “breach of contract” heading, and they cite to no adequate
14 authority within their briefing to support a conclusion that they are likely to succeed on
15 the merits.

16 Nonetheless, because the Wrights are proceeding *pro se*, the Court extends some
17 latitude to their pleadings. In doing so, the Court finds that the bulk of the Wrights’
18 arguments appear to rest on their assertion that Defendants are not the original creditors
19 and therefore lack standing to foreclose on the mortgage at issue. However, as this Court
20 has concluded previously, courts “have routinely held that [a defendants’] so-called ‘show
21 me the note’ argument lacks merit.” *Freeston v. Bishop, White & Marshall, P.S.*, 2010
22 WL 1186276 (W.D. Wash. 2010) (quoting *Diessner v. Mortgage Electronic Registration*
23 *Systems*, 618 F. Supp. 2d 1184, 1187 (D. Ariz. 2009) (collecting cases)).

24 Therefore, the Wrights have failed to adequately establish the need for a TRO. For
25 the same reasons, the Wrights have failed to adequately establish the need for a
26 preliminary injunction hearing.

III. ORDER

Therefore, it is hereby **ORDERED** that the *ex parte* motion for a TRO and/or preliminary injunction is **DENIED** without prejudice for the reasons stated herein.

DATED this 4th day of January, 2011.



BENJAMIN H. SETTLE
United States District Judge